

Patent Application No.: 09/802,911  
Attorney Docket No.: 58764.000033

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Linda TROLINDER et al.

Serial No.: 09/921,922

Filed: August 6, 2001

Art Unit: 1638

Examiner: David H. Kruse

TECH CENTER 1600/2900

FEB 24 2003

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For: HERBICIDE TOLERANT COTTON PLANTS AND METHODS FOR  
PRODUCING AND IDENTIFYING SAME

**TRANSMITTAL LETTER**

Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark Office  
Washington, D.C. 20231

Sir:

The following are enclosed for consideration in the above-identified application:

|  | FEE       |
|--|-----------|
| <input type="checkbox"/> Response to Notice to File Missing Parts  | \$        |
| <input checked="" type="checkbox"/> Response to Office Action Restriction Requirement of January 21, 2003  | \$        |
| <input type="checkbox"/> Declaration: <input type="checkbox"/> Original; <input type="checkbox"/> Supplemental   | \$        |
| <input type="checkbox"/> Submission of Formal Drawings   | \$        |
| <input type="checkbox"/> Informal Drawings: ____ Sheets ____ Figures   | \$        |
| <input type="checkbox"/> Supplemental Information Disclosure Statement, Form PTO SB/08A, copy of International Search Report, and three (3) references                   | \$        |
| <input type="checkbox"/> Amendment: <input type="checkbox"/> Preliminary; <input type="checkbox"/> § 116; <input type="checkbox"/> § 312; <input type="checkbox"/> Other | \$        |
| <input type="checkbox"/> Request for Extension of Time <input type="checkbox"/> month(s)   | \$        |
| <input type="checkbox"/> Issue Fee: <input type="checkbox"/> Part B - Issue Fee Transmittal <input type="checkbox"/> Part C - Charge to Deposit Account                  | \$        |
| <input type="checkbox"/> Notice of Appeal  | \$        |
| <input type="checkbox"/> Appeal Brief  | \$        |
| <input type="checkbox"/> Request for Oral Hearing  | \$        |
| <input type="checkbox"/> Reply Brief   | \$        |
| <input type="checkbox"/> Terminal Disclaimer   | \$        |
| <input type="checkbox"/> An additional claim fee is required, and is calculated as shown below   | \$        |
| <b>TOTAL FEES BEING SUBMITTED</b>  | <b>\$</b> |

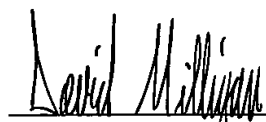
|   | Claims<br>Remaining | Claims Paid<br>For | Extra | Rate      | Fee    |
|---|---------------------|--------------------|-------|-----------|--------|
| Total Claims                              |                     |                    | 0     | x \$18.00 | \$     |
| Independent<br>Claims                     |                     |                    | 0     | x \$84.00 | \$     |
| Multiple Dependent Claims (if applicable) |                     |                    |       | \$        | \$     |
| <b>TOTAL EXCESS CLAIMS FEE</b>            |                     |                    |       |           | \$     |
| SMALL ENTITY TOTAL (if applicable)        |                     |                    |       |           | \$ .00 |

The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and § 1.17 associated with this communication or credit any overpayment to the deposit account of Hunton & Williams, Deposit Account Number 50-0206.

Respectfully submitted,

Dated: February 21, 2003

By:



Robert M. Schulman  
Registration No. 31,196

David H. Milligan  
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RMS/DHM/cbt



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**RESPONSE TO OFFICE ACTION RESTRICTION REQUIREMENT  
OF JANUARY 21, 2003**

Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark Office  
Washington, D.C. 20231

Sir:

Responsive to the Office Action mailed January 21, 2003, please consider the following remarks.

**REMARKS**

In the Office Action of January 21, 2003, the Examiner requested restriction to one of the following inventions under 35 U.S.C. § 1.121.

1. Claims 1-5, 20-27, drawn to a transgenic cotton plant or seed, cells or tissue thereof comprising event EE-GH1 and a process of making same, classified in class 800, subclass 300;
2. Claims 6-12, 18 and 19, drawn to a method of identifying a transgenic plant, or cells or tissue thereof comprising the elite event EE-GH1, classified in class 435, subclass 6; and
3. Claims 12-17, drawn to a kit for identifying elite event EE-GH1 in biological samples, classified in class 536, subclass 24.3.

Applicant hereby elects Invention 1, Claims 1-5, 20-27, drawn to a transgenic cotton plant or seed, cells or tissue thereof comprising event EE-GH1 and a process of making same, classified in class 800, subclass 300, with traverse.

Applicants respectfully traverse the contention that Inventions II and III are distinct as the kit for identifying elite event EE-GH1 allegedly could be used to identify any transgenic plant

comprising a bar gene. Rather, Applicants respectfully submit that all of the methods are based on the use of at least one primer or probe which specifically recognizes the 5' flanking region of SEQ ID NO 3 (i.e., the plant sequence as present in the EE-GH1 comprising plants upstream of the inserted foreign DNA) or the 3' flanking region of SEQ ID NO 4 (i.e., the plant sequence as present in EE-GH1 comprising plants downstream of the inserted foreign DNA in EE-GH1). Similarly, Applicants respectfully submit that all claimed kits contain at least one primer or probe which specifically recognizes the 5' flanking region of SEQ ID NO 3 or the 3' flanking region of SEQ ID NO 4. These 5' or 3' regions are unique to the specific insertion of the foreign DNA in EE-GH1 and can therefore not be used to detect the bar gene in any transgenic plant. As demonstrated, for example, in the Examples at page 35, or Figure 1, the use of a kit according to the claims in a discriminating PCR protocol only detects the EE-GH1 elite event amongst the different cotton leaf material from a plant comprising different transgenic events. For at least the foregoing reasons, Applicants respectfully traverse the Restriction Requirement.

The Assistant Commissioner is hereby authorized to charge fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required now or hereafter, or credit any overpayment, to Deposit Account No. 50-0206.

Respectfully submitted,

Dated: February 21, 2003

By:



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Registration No. 31,196  
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